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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,319	01/11/2002	Fumio Sugaya	Q66579	4442

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SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3202

EXAMINER	
CROSS, LATOYA I	

ART UNIT	PAPER NUMBER
1743	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/042,319	SUGAYA ET AL.	
	Examiner	Art Unit	
	LaToya C. Younger	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 December 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) *3 and 4* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5 and 6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 13, 2005 has been entered. Claims 1-6 are pending. Claims 3 and 4 are withdrawn from consideration as being directed to non-elected subject matter.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "correction means which compensates for fluctuation in the value of the optical density". Applicants have invoked 112, 6th paragraph, which requires that a corresponding structure be described in the specification and equivalents there. A review of the specification finds no structure which Applicants have correlated to the claimed mean-plus-function, as required. Thus, the claims are indefinite.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 5,037,613 to Shaw et al in view of US patent 6,838,051 to Marquiss et al.

Shaw et al disclose incubators comprising with a plurality of element chambers (66) which are arranged along the outer periphery of the incubator rotor (64) and each of which accommodates a dry analysis element (E) spotted with a sample and incubates the dry analysis element and a light measuring means (90) having a light measuring head (92) which measures the optical density of the dry analysis element are known.

With respect to Applicants' claimed improvement, Applicants recite the light measuring means having a correction means that compensates for fluctuations in the optical density.

Marquiss et al teach a sample processing system comprising a light monitor (5122). Marquiss et al teach that the light monitor used to correct for fluctuations in the intensity of light provided by the light sources. Such corrections may be performed by reporting detected intensities as a ratio over corresponding times of the luminescence intensity measured by the detector to the excitation light intensity measured by the light monitor. The light monitor also can be programmed to alert the user if the light source fails. Thus, the light monitor is in communication with the light source, as recited in claim 6. See col. 44, lines 40-48. The light monitor of Marquiss et al is equivalent to the claimed "correction means which compensates for fluctuation in the value of the optical density" since Marquiss et al teach that the light monitor corrects for fluctuations in the intensity of light.

It would have been obvious to one of ordinary skill in the art to modify the incubators known in the art with a light monitor to provide a manner for assuring accurate results by correcting for fluctuations in light intensity.

With respect to claim 2, the manner in which the correction means operates within the device is not sufficiently limiting to make the claims patentable since the limitation is directed to the manner in which the device operates. See MPEP 2114.

With respect to claims 5, Marquiss et al teach a transport module (2100) as a part of the system for transporting slides from I/O areas to various other functions in the system. As a part of the transport module, the reference teaches a bar code reader (col. 17) which may serve as a position detector to determine the position of the test slide, as claimed by Applicants.

Response to Arguments

6. Applicant's arguments filed December 13, 2005 have been fully considered but they are not persuasive. With respect to the Marquiss et al reference, Applicants argue that Marquiss et al fail to teach that the light monitor monitors fluctuations in the optical density of the analysis element that are due to fluctuations in the distance between the light measuring head and the element chamber.

The Examiner does not agree that this distinction overcomes the obviousness rejection. Marquiss et al teach a correction means for correcting fluctuations in light intensities. While the reference may not teach that the light intensities are due to fluctuations in the distance between the light measuring head and the element chamber, this part of the limitation is has no bearing on the limitation of the means for compensating for fluctuation in the light intensity. In other words, the "function" portion of the means-plus-function in question is the ability to compensate for fluctuations in the optical density. Marquiss et al teach such by teaching a light monitors that monitors fluctuations in light intensities. Thus, the means-

plus-function limitation is met. The cause of the fluctuations, as recited in the instant claims, is not sufficient to make the claims patentable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya C. Younger whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 10:30 a.m. - 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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M. T. Cole
MONIQUE T. COLE
PRIMARY EXAMINER